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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91209519
Party	Defendant Made in Mars, Inc.
Correspondence Address	Richard Pyles MADE IN MARS INC 330 TURNBULL CANYON ROAD City of Industry, CA 91745 UNITED STATES richardp@madeinmars.com
Submission	Other Motions/Papers
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Attachments	motion for relief from final judgment.pdf(100423 bytes ) declaration of richard pyles.pdf(976177 bytes ) proposed answer to notice of opposition.pdf(96467 bytes ) certificate of service.pdf(75486 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of  
Application Serial No: 85608422  
For the Mark: QUEST BOARDS  
Published in the Official Gazette  
October 30, 2012

OCV INTELLECTUAL CAPITAL, LLC	)	Opposition No: 91209519
	)	
Opposer,	)	MOTION FOR RELIEF FROM FINAL JUDGMENT,
v.	)	DECLARATION OF RICHARD PYLES, AND PROPOSED
	)	ANSWER TO NOTICE OF OPPOSITION.
MADE IN MARS, INC.,	)	
	)	
Applicant.	)	

**APPLICANT'S MOTION FOR RELIEF FROM FINAL JUDGMENT**

Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, Applicant Made In Mars, Inc. ("Applicant") respectfully requests the Board to set aside the default judgment entered against it on the grounds of mistake, inadvertence, surprise, or excusable neglect.

**I. BACKGROUND**

1. On June 7, 2013, the Board entered a default judgment against the Applicant for failing to file an answer to the notice of opposition. The answer to the notice of opposition was due on April 8, 2013, and a notice of default was issued on April 24, 2013.

2. Prior to the due date for the answer, the Applicant began settlement negotiations with counsel for OCV Intellectual Capital, LLC. ("Opposer"). During these negotiations, both parties agreed that if Applicant deleted specific goods from the application, Opposer would withdraw the notice of opposition. (Declaration of Richard Pyles, ¶6).

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2. On or about March 14, 2013, the Applicant's correspondent (Richard Pyles) called the interlocutory attorney (Elizabeth Winter) and left her a voice message explaining that he had questions about amending the trademark application and opposition proceedings in general. On or about the same day, Ms. Winter returned Mr. Pyle's phone call and left him a voice message, but did not provide any directions or answers to his questions. Between April 1, 2013 and June 17, 2013, Mr. Pyles attempted calling Ms. Winter several more times without being able to speak with her. As a result, Mr. Pyles never filed an amendment to the application. (Declaration of Richard Pyles, ¶7).

3. The first time that Mr. Pyles spoke to Ms. Winter was on June 18, 2013 - eleven days after the default judgment was entered. She apologized for the delay in returning his calls and indicated that she tried to contact him via email. Unfortunately, the email address that she had on record for Mr. Pyles was incorrect (due to a transcription or clerical error) and he never received any of her messages. (Declaration of Richard Pyles, ¶8).

4. Between March 12, 2013 (when Applicant began negotiating with Opposer's counsel) and April 8, 2013 (the due date for the answer), Mr. Pyles inadvertently forgot to file an answer to the notice of opposition. Mr. Pyles forgot to file the answer because he inadvertently failed to calendar the due date after receiving the notice of opposition. (Declaration of Richard Pyles, ¶9).

5. On or about March 1, 2013, Applicant ceased using its former P.O. Box address and started using a new physical address. When this change occurred, Mr. Pyles forgot to update the Applicant's correspondence information on the USPTO website. As a result, Applicant never received a notice of default. Mr. Pyles does not recall receiving a notice of default via email. If he did receive a copy of the notice of default via email, he mistakenly overlooked it and/or accidentally deleted it. (Declaration of Richard Pyles, ¶10).

6. Due to Mr. Pyles inadvertent failure to calendar the due date for the answer to the notice of opposition, inadvertent failure to update the Applicant's correspondence information with the USPTO, and difficulties communicating with the interlocutory attorney, an answer to the notice of opposition and/or response to the notice of default was never filed. As a result, a default judgment was entered against the Applicant on June 7, 2013.

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## **II. ARGUMENT**

7. F.R.C.P. 60(b) sets forth the circumstances in which a court may relieve a party from what would otherwise be a final judgment. Those circumstances include "(1) mistake, inadvertence, surprise or excusable neglect; [...] or (6) any other reason that justifies relief." A motion under Rule 60(b) must also be made within a reasonable time and no more than a year after the entry of the judgment.

8. Since the default judgment was entered against the Applicant on June 7, 2013 (less than one month ago), this motion is timely filed. And as shown by the Declaration of Richard Pyles, the Applicant's failure to file an answer to the notice of opposition and/or respond to the notice of default was clearly due to mistake, inadvertence, surprise, or excusable neglect.

## **III. CONCLUSION**

For the foregoing reasons and the reasons stated in the Declaration of Richard Pyles, Applicant respectfully requests that the Board set aside the default judgment and grant it an extension to file an answer to the notice of opposition.

Date: June 28, 2013

Respectfully Submitted,

**MADE IN MARS, INC.**

/Scott R. Weber/  
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OCV INTELLECTUAL CAPITAL, LLC	)	Opposition No: 91209519
	)	
Opposer,	)	DECLARATION OF RICHARD PYLES
v.	)	(CORRESPONDENT FOR APPLICANT)
	)	IN SUPPORT OF MOTION FOR RELIEF
MADE IN MARS, INC.,	)	FROM FINAL JUDGMENT.
	)	
Applicant.	)	

## DECLARATION OF RICHARD PYLES

1. I, Richard Pyles, am the correspondent for the Applicant in this action. I have personal knowledge of the facts stated herein and, if called upon to do so, could competently testify thereto.

2. I am the President of Made in Mars, Inc. ("Applicant") and was responsible for filing the trademark application that is the subject of Opposition No: 91209519.

3. I am not an attorney and have no prior experience dealing with trademark opposition proceedings.

4. On or about February 27, 2013, I received notice that OCV Intellectual Capital, LLC ("Opposer") had filed a notice of opposition.

5. On or about March 12, 2013, I began settlement negotiations with counsel for the Opposer.

6. On or about March 14, 2013, I agreed with Opposer's counsel to delete the following goods: "toy vehicles; toy vehicles and accessories therefor" and "stuffed and plush toys" from the goods and services section of the trademark application. Opposer's counsel agreed to withdraw the opposition once the amendment to the application had been submitted and accepted by the USPTO/TTAB.

7. On or about March 14, 2013, I attempted calling the interlocutory attorney (Elizabeth Winter) approximately five or six times because I had questions about amending the trademark application and opposition proceedings in general. Sometime after leaving Ms. Winter a detailed message, she returned my call and reached my voice mail. Ms. Winter left me a brief message, but did not provide any directions or answers to my questions about how to proceed. I ultimately called Ms. Winter numerous times (between April 1, 2013 and June 18, 2013) without being able to get in touch with her or receiving any return calls or emails. As a result, I never filed an amendment to the application.

8. The first time that I spoke to Ms. Winter was on June 18, 2013 - eleven days after the default judgment was entered. She apologized for the delay in returning my calls and indicated that she had tried to contact me via email. Unfortunately, the email address that she had on file was incorrect (due to a transcription or clerical error) and I never received any email messages.

9. Between March 12, 2013 (when I first began settlement negotiations with Opposer's counsel) and April 8, 2013 (the due date for the answer), I inadvertently forgot to file an answer to the notice of opposition. I forgot to file the answer because I inadvertently failed to calendar the due date after receiving the notice of opposition and never received any communications from the USPTO/TTAB.

10. On or about March 1, 2013, Made In Mars, Inc. (Applicant) ceased using its former P.O. Box address (the original correspondence address listed in the application) and started using a new physical address. When this change occurred, I forgot to update the Applicant's correspondence information on the USPTO website. As a result, Applicant never received a notice of default. I do not recall receiving a notice of default via email. If I did receive a copy of the notice of default via email, I mistakenly overlooked it and/or accidentally deleted it.

11. On June 10, 2013, I updated Applicant's address on the USPTO website.

12. Due to my inadvertent failure to calendar the due date for the answer to the notice of opposition, inadvertent failure to update the Applicant's correspondence information with the USPTO, and difficulties communicating with the interlocutory attorney/TTAB, an answer to the notice of opposition and/or response to the notice of default was never filed. As a result, a default judgment was entered against the Applicant on June 7, 2013. I am now requesting Relief from Final Judgment so that the Applicant can amend the application as requested by the Opposer and both parties will have the remedy that that negotiated back in March.

I declare under penalty of perjury that foregoing is true and correct to best of my knowledge.

Dated: June 26, 2013

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'R. Pyles', is written over a horizontal line.

**Richard Pyles**  
**Correspondent for Applicant**  
Made In Mars, Inc.  
richardp@madeinmars.com  
330 Turnbull Canyon Road  
City of Industry, CA 91745  
(626) 336-9640 ext. 209

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
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In the Matter of  
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Opposer,	)	[PROPOSED] ANSWER TO NOTICE OF OPPOSITION.
v.	)	
	)	
MADE IN MARS, INC.,	)	
	)	
Applicant.	)	

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**APPLICANT'S PROPOSED ANSWER TO NOTICE OF OPPOSITION**

Applicant, Made In Mars, Inc., for its answer to the *Notice of Opposition* of Opposer, OCV Intellectual Capital, LLC, answers the specifically numbered paragraphs of the *Notice of Opposition* and further states as follows:

1. Answering paragraph 1 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.
2. Answering paragraph 2 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.
3. Answering paragraph 3 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.
4. Answering paragraph 4 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.
5. Answering paragraph 5 of the Notice of Opposition, Applicant admits the allegations thereof.
6. Answering paragraph 6 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.
7. Answering paragraph 7 of the Notice of Opposition, Applicant denies the allegations thereof.



8. Answering paragraph 8 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

9. Answering paragraph 9 of the Notice of Opposition, Applicant denies the allegations thereof.

WHEREFORE, Applicant respectfully requests dismissal of the *Notice of Opposition* and that Applicant's mark be permitted to proceed to registration.

Date: June 28, 2013

Respectfully Submitted,

**MADE IN MARS, INC.**

/Scott R. Weber/  
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 28, 2013, I served a copy of the *Applicant's Motion For Relief From Final Judgment, the Declaration of Richard Pyles, and the Applicant's Proposed Answer to Notice of Opposition* on the Opposer by mailing a copy thereof by U.S. Mail, postage prepaid, addressed to Opposer's Counsel at their correspondence address of record in the records of the Patent and Trademark Office as follows:

GARY D. KRUGMAN  
2100 PENNSYLVANIA AVE NW  
WASHINGTON, DC 20037

/Scott R. Weber/\_\_\_\_\_  
Scott R. Weber